

CRAVATH, SWAINE & MOORE

RECORDATION NO. 15087-B

Filed & Recorded

ONE CHASE MANHATTAN PLAZA

OCT 28 1985 3-0 5 PM

TELEPHONE 212 422-3000

TELEX
RCA 233663
WUD 125547
WUI 620976
TRT 177149

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RECORDATION NO. 15087-A
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HENRY P. RIORDAN
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WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
JOHN F. HUNT
GEORGE J. GILLESPIE, III
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
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JOHN E. YOUNG
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DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL
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PATRICIA GEOGHEGAN
D. COLLIER KIRKHAM
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KRIS F. HEINZELMAN
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PHILIP A. GELSTON
RORY O. MILLSON
NEIL P. WESTREICH
FRANCIS P. BARRON
RICHARD W. CLARY
WILLIAM P. ROBERTS
JAMES D. COOPER

NEW YORK, N. Y. 10005

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 15087-C

Filed & Recorded

OCT 28 1985 3-0 5 PM

6-301A

No.

OCT 28 1986

Date

Fee \$ 40.00

OCT 28 1985 3-0 5 PM

INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

RECORDATION NO. 15087-D

Filed & Recorded

OCT 28 1985 3-0 5 PM

October 27, 1986

INTERSTATE COMMERCE COMMISSION

Burlington Northern Railroad Company

Electrical Power Purchase Financing

9-3/8% Conditional Sale Indebtedness

Due December 31, 2000

RECORDATION NO. 15087

Filed & Recorded

OCT 28 1985 3-0 5 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 15087-E

Filed & Recorded

OCT 28 1985 3-0 5 PM

INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Oakway, Inc., for filing and recordation counterparts of the following documents:

New Number

1. (a) Conditional Sale Agreement dated as of October 15, 1986, between The Connecticut National Bank, as Trustee, and General Motors Corporation (Electro-Motive Division), as Builder; and

- A

(b) Agreement and Assignment dated as of October 15, 1986, between General Motors Corporation (Electro-Motive Division), as Builder, and The Connecticut Bank and Trust Company, National Association, as Agent.

- B

2. (a) Lease of Railroad Equipment dated as of October 15, 1986, between Oakway, Inc., as Lessee, and The Connecticut National Bank, as Trustee; and

- C

(b) Assignment of Lease and Agreement dated as of October 15, 1986, between The Connecticut National Bank, as Trustee, and The Connecticut Bank and Trust Company, National Association, as Agent.

See next page for:

- D

- E

Cravath Swaine & Moore
Burlington Northern Railroad Company

OCT 28 1986 2 53 PM '86
HOTEL & LOBBY

D 3. Bailment Agreement dated as of October 15, 1986, between Oakway, Inc., as Bailor, and Burlington Northern Railroad Company, as Bailee.

E 4. Assignment of Power Purchase Agreement dated as of October 15, 1986, among Oakway, Inc., as Oakway, The Connecticut Bank and Trust Company, National Association, as Agent, and The Connecticut National Bank, as Trustee.

The names and address of the parties to the aforementioned agreements are as follows:

1. Agent:

The Connecticut Bank and Trust Company,
National Association
One Constitution Plaza
Hartford, Connecticut 06115

2. Trustee-Lessor:

The Connecticut National Bank
777 Main Street
Hartford, Connecticut 06115

3. Builder-Vendor:

General Motors Corporation
(Electro-Motive Division)
LaGrange, Illinois 60525

4. Lessee-Bailor-Oakway:

Oakway, Inc.
45 Cardinal Drive
Westfield, New Jersey 07092

5. Bailee:

Burlington Northern Railroad Company
9401 Indian Creek Parkway
Overland Park, Kansas 66210-9136

Please file and record the documents referred to in this letter and index them under the names of the Agent, the Trustee-Lessor, the Builder-Vendor, the Lessee-Bailor-Oakway and the Bailee.

The equipment covered by the aforementioned documents is listed on Exhibit A attached hereto. The equipment bears the legend "Leased to Oakway, Inc. Subject to a Security Agreement Filed with The Interstate Commerce Commission".

There is also enclosed a check for \$40 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document), the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document), the Bailment Agreement and the Assignment of Power Purchase Agreement.

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich

Noreta R. McGee, Secretary,
Interstate Commerce Commission,
Washington D.C. 20423

Encls.

APPENDIX A TO LEASE

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Estimated* Unit Base Price</u>	<u>Estimated* Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
3,800 h.p. Model SD-60 diesel- electric locomotive	EMD	GM Loco- motive Specifica- tion 8128, Amendment 8128-3 as supplemen- ted by Final Specifica- tion Supplement dated 10/15/86	La Grange, Illinois	100	QWY 9000-9099	\$1,282,977.16	\$128,297,716	October 1986, through January 1987, at Clyde, Illinois
						For deliveries on or before 12/31/86		
						For deliveries after 12/31/86		
						\$1,170,749.14	\$117,074,914	

* Includes prepaid freight and switching charges to Clyde, Illinois, estimated at \$250 per Unit.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

10/29/86

Laurance V. Goodrich
Cravath, Swaine & Moore
One Chase Manhattan plaza
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/28/86 at 3:05pm, and assigned recordation number(s). 15087, 15087-A, 15087-B - 15087-C, 15087-D, 15087-E

Sincerely yours,

Norita R. McGee
Secretary

Enclosure(s)

SE-30
(7/79)

OCT 28 1986 3-0 5 PM

INTERSTATE COMMERCE COMMISSION
 ASSIGNMENT OF POWER PURCHASE AGREEMENT
 dated as of October 15, 1986, among OAKWAY,
 INC., a New Jersey Corporation ("Oakway"),
 THE CONNECTICUT BANK AND TRUST COMPANY,
 NATIONAL ASSOCIATION, as Agent ("Agent")
 under a Participation Agreement dated as of
 the date hereof ("Participation Agreement"),
 and THE CONNECTICUT NATIONAL BANK, acting not
 in its individual capacity but solely in its
 capacity as Trustee ("Trustee") under a Trust
 Agreement ("Trust Agreement") dated as of the
 date hereof with CHEMICAL BANK, a New York
 banking corporation ("Owner").

WHEREAS the Trustee is entering into a Conditional
 Sale Agreement dated as of the date hereof ("CSA") with
 General Motors Corporation (Electro-Motive Division)
 ("EMD"), providing for the sale to the Trustee of such units
 of railroad equipment ("Units") described in Annex B thereto
 as are delivered to and accepted by the Trustee thereunder;

WHEREAS the Trustee and Oakway have entered into a
 Lease of Railroad Equipment dated as of the date hereof
 ("Lease") providing for the leasing by the Trustee to Oakway
 of the Units;

WHEREAS the Units will be made available by Oakway
 to Burlington Northern Railroad Company, a Delaware corpora-
 tion ("Power Purchaser"), pursuant to an Electrical Power
 Purchase Agreement ("Electrical Power Agreement") dated as
 of the date hereof between Oakway and the Power Purchaser;

WHEREAS EMD has agreed to provide maintenance for
 the Units pursuant to a Maintenance Agreement dated as of
 the date hereof (the "Maintenance Agreement") between Oakway
 and EMD;

WHEREAS the term "Assignee" hereunder (i) shall
 mean the Agent until the full discharge and satisfaction of
 all sums and other obligations due to the Agent from the
 Trustee under the CSA, and (ii) thereafter, shall mean
 Trustee;

WHEREAS in order to provide security for the
 obligations of the Trustee under the CSA and to provide
 security for the obligations of the Lessee to the Trustee
 under the Lease and as an inducement to the Agent to invest
 in the CSA Indebtedness (as defined in paragraph 4.3(b) of

the CSA) and as an inducement to the Trustee to furnish a portion of the Purchase Price (as defined in paragraph 4.1 of the CSA) of the Equipment, Oakway agrees to assign for security purposes its rights in, to and under the Power Purchase Agreement to the Assignee;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Oakway hereby assigns, transfers and sets over unto the Assignee, as security as aforesaid, all Oakway's right, title and interest, powers, privileges and other benefits under the Electrical Power Agreement, including, without limitation, the immediate right to receive and collect all sums payable to or receivable by Oakway from the Power Purchaser under or pursuant to the provisions of the Electrical Power Agreement whether as payments, settlement payment, indemnity, liquidated damages or otherwise (such sums, other than the Excluded Indemnity defined below, being hereinafter called "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an event of default specified in the Electrical Power Agreement, and to do any and all other things whatsoever which Oakway is or may become entitled to do under the Electrical Power Agreement; provided, however, that, notwithstanding the foregoing, Oakway, the Trustee and the Owner shall be entitled to any payments made under the Electrical Power Agreement constituting indemnity in favor of Oakway or measured by the indemnity obligations of Oakway under the Lease in favor of the Trustee or the Owner or included in Section 2(b) of the Power Purchaser Consent (as defined in the Participation Agreement), which payments are excluded from this Assignment ("Excluded Indemnity"). In furtherance of the foregoing assignment, Oakway hereby irrevocably authorizes and empowers the Assignee in its own name, or in the name of its nominee, or in the name of Oakway or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which Oakway is or may become entitled under the Electrical Power Agreement and to enforce compliance by the Power Purchaser with all the terms and provisions thereof.

The Assignee agrees to accept any Payments made by the Power Purchaser for the account of Oakway pursuant to the Electrical Power Agreement. To the extent received, the Assignee will apply such payments on the same day "first",

to satisfy the obligations then due (whether or not such obligations are non recourse) of the Trustee under the CSA (which satisfaction shall be deemed to satisfy, to the extent of such payments, the obligations of Oakway to the Trustee under the Lease), and, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder, shall have occurred and be continuing, "second", to pay to the Owner an amount equal to each rental or Casualty Value payment payable under the Lease less the amount distributed under "first" (which payment shall likewise be deemed to satisfy, to the extent of such payment, the obligations of Oakway to the Trustee under the Lease), "third", to Oakway an amount equal to \$45,328.90, but in the case of "third" only from regularly scheduled semi-annual payments under the Electrical Power Agreement or, in the case of a termination of the Electrical Power Agreement pursuant to Section 6(b), an amount calculated as "net present value" thereunder, "fourth", to pay the invoices of EMD submitted to the Assignee, as assignee of Oakway, pursuant to the Maintenance Agreement, "fifth", with respect to payments due on December 31, 1986, and June 30, 1987, any balance to the Power Purchaser, and, thereafter, any balance to Oakway. If the Agent shall on any date not receive sufficient payments under the Electrical Power Agreement to satisfy all the obligations then due under clause first of the next preceding sentence, the Agent shall notify the Trustee, the Owner and the Power Purchaser by telephone, confirmed in writing, at its address set forth in the Lease; provided, however, that the failure of the Agent so to notify the Trustee, the Owner and the Power Purchaser shall not affect the obligations of the Trustee under the CSA, except that the Assignee may not make a Declaration of Default (as defined in paragraph 16.1 of the CSA) based solely on an event of default under subparagraph (a) of said paragraph 16.1 arising solely by reason of the failure of the Power Purchaser to make any such payment which would not constitute an event of default under subparagraph (f) of said paragraph 16.1 if the Trustee complies with the provisions thereof, unless such event of default is not remedied within five days after notification is given as aforesaid.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the liability of Oakway under the Electrical Power Agreement, it being agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of Oakway to the Power Purchaser shall

be and remain enforceable by the Power Purchaser, its successors and assigns, against, and only against, Oakway or persons other than the Assignee, the Trustee or the Owner.

3. Oakway will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Electrical Power Agreement provides are to be performed by Oakway; without the written consent of the Assignee, Oakway will not anticipate the payments under the Electrical Power Agreement or waive, excuse, condone, forgive or in any manner release or discharge the Power Purchaser thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Power Purchaser, including, without limitation, the obligation to make payments in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Electrical Power Agreement and Oakway agrees that any amendment, modification or termination thereof without such consent shall be void.

4. Oakway does hereby constitute the Assignee Oakway's true and lawful attorney, irrevocably, with full power (in the name of Oakway, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Electrical Power Agreement to which Oakway is or may become entitled, to enforce compliance by the Power Purchaser with all the terms and provisions of the Electrical Power Agreement, to endorse any checks or other instruments or orders in connection therewith and to file any claim or take any action or institute any proceedings which to the Assignee may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums and other obligations due from the Trustee under the CSA and upon the full discharge and satisfaction of all sums and other obligations due from the Lessee under the Lease, this Assignment and all rights herein assigned to the Assignee shall terminate, and all estate, right, title and interest of the Assignee in and to the Electrical Power Agreement shall revert to Oakway. Promptly following such full discharge and satisfaction, the Assignee agrees that it will advise Oakway and the Power Purchaser in writing that no further payments under the Electrical Power Agreement are to be made to the Assignee.

6. Oakway will, from time to time, execute, acknowledge and deliver any and all further instruments

reasonably requested by the Assignee in order to confirm or further assure, the interest of the Assignee hereunder.

7. The Assignee may assign all or any of the rights assigned to it hereby or arising under the Electrical Power Agreement, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

8. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and the Uniform Commercial Code of New Jersey.

9. Oakway shall cause copies of all notices received in connection with the Electrical Power Agreement and all payments hereunder to be promptly delivered or made to the Assignee.

10. The Assignee hereby agrees with Oakway, the Trustee and the Owner, as third party beneficiaries, that the Assignee will not, while the Assignee is the Agent so long as no event of default ("event of default") under the CSA has occurred and is continuing or while the Assignee is the Trustee so long as no Event of Default ("Event of Default") under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by Oakway to the Assignee by this Assignment, except the right to receive and apply the Payments as provided in paragraph 1 hereof, and that, subject to the terms of the Electrical Power Agreement, the CSA and the Lease, Oakway may, so long as no event of default or Event of Default has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of Section 16 of the Electrical Power Agreement; provided, however, that Oakway, the Trustee and the Owner each may, whether or not an event of default or an Event of Default has occurred and is then continuing, exercise or enforce, or seek to exercise and enforce, its rights, powers, privileges and remedies arising out of clause (1) of the first paragraph of Section 16 of the Electrical Power Agreement in respect of amounts payable under the Electrical Power Agreement measured by any Excluded Indemnity to which it is entitled; provided


further, however, that Oakway, the Trustee and the Owner shall not, without the prior written consent of the Assignee, terminate the Electrical Power Agreement or otherwise exercise or enforce, or seek to exercise or enforce any rights, powers, privileges and remedies arising out of clause (2) of the first paragraph of Section 16 of the Electrical Power Agreement or take any action which would cause any termination of the Electrical Power Agreement.

This Assignment shall be effective upon delivery of fully executed counterparts hereof to Cravath, Swaine & Moore, at their offices in New York, New York.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

OAKWAY, INC.,

by


E.V. President

[Corporate Seal]

Attest:


Secretary



by

by

AP-7

THE CONNECTICUT BANK AND TRUST
COMPANY, NATIONAL ASSOCIATION,
as Agent,

by

Authorized Officer

[Seal]

Attest:

Authorized Officer

THE CONNECTICUT NATIONAL BANK,
as Trustee,

by



Authorized Officer

[Seal]

Attest:



Authorized Officer

STATE OF NEW JERSEY,)
) ss.:
COUNTY OF UNION,)

On this ^{28th} day of October 1986, before me personally appeared R.E. Connolly to me personally known, who, being by me duly sworn, says that he is ^{the} President of OAKWAY, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Harold Block
Notary Public

MY COMMISSION EXPIRES
DECEMBER 15, 1987

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF HARTFORD,)

On this day of October 1986, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEW JERSEY,)
) ss.:
COUNTY OF UNION,)

On this day of October 1986, before me personally appeared to me personally known, who, being by me duly sworn, says that he is the President of OAKWAY, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF HARTFORD,)

On this 27th day of October 1986, before me personally appeared Mason M. Lemont , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

Ruth A. Smith
Notary Public

[Notarial Seal]

My Commission expires

RUTH A. SMITH
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1989

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF HARTFORD,)

On this 24th day of October 1986, before me personally appeared W. R. MUNROE, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

Susan C. Chadbourne
Notary Public

[Notarial Seal]

My Commission expires

SUSAN C. CHADBOURNE
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1990